

WRITTEN TESTIMONY, RE: SUBSTITUTE HB 4001
HOUSE OVERSIGHT COMMITTEE
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The City of Livonia, like other communities across the state, puts considerable effort and expense into responding to Freedom of Information Act requests in accordance with existing law. This continues despite declines in various revenue sources and the concomitant reductions in the resources available to devote to such responses. Though we recognize that the well-intentioned substitute for HB 4001 is better in some ways than its predecessor, it still feels to us as if it assumes that FOIA responders are villains who must be subdued, rather than public servants who are striving to do more with less. As one of our department heads put it, this substitute for HB 4001 “will reduce the great customer service that we are already under stress to continue to provide” by imposing requirements which cost additional resources with modest benefit to the public.

Perhaps some misconceptions are driving proposals like the substitute under discussion here. At a hearing on this subject last year, advocates of more punitive FOIA measures suggested that many or most FOIA requests come either from the media or from impoverished senior citizens, who in either case are stymied by state and local officials who seek to veil the processes of government in secrecy. While this may be true in some agency or other within Michigan, it is not our experience in Livonia. The chief sources of FOIA requests in our community are people looking to profit from information gathered by government and/or to dig up “dirt” on legal or personal adversaries.

As a result, FOIA responders find themselves on the front lines protecting the privacy of citizens. Not only are FOIA responders frequently called upon to make judgments about what information is or is not private, they also need to know various state and federal laws protecting individual privacy in order to do their jobs properly. It also is not unusual for us to receive requests for building plans because the new property owner does not want to pay the architect for the drawings of his building, even if those drawings are protected by federal copyright law. We get requests regarding real estate from agents who want city government to do their due diligence for them (one such recent request called for an impossibly long list of documents including “anything that might adversely affect the marketing of the property”). FOIA, it turns out, is a complicated law to administer, considering various state and federal laws and all the other interests at stake. And it is all supposed to be handled by the lowest paid employee in five days or less!

Thus, the proposed subsection 4(5), which would *require* that lowest-paid employee to know the content of the City’s website well enough to be able to tell a requestor which parts of the request are answered on the website, and to give this information to the requestor without charge, is especially problematic. A suggestion intended to give FOIA responders the *option* of advising requestors that the information sought can be downloaded from the website has accidentally turned into a punitive new mandate.

The extensive new invoice requirements – including the requirement that the City send a copy of its FOIA policy with every response – appear to greatly complicate FOIA response/billing without any obvious benefit to anyone except perhaps the requestor, who may get a price reduction as a result of the downward rounding the substitute would impose. Of course, that means the cost of the response goes uncompensated to a corresponding degree.

And although the explicitly punitive provisions of the substitute – subsections 5(8) and 10(4) and (7) – have been toned down from the original bill, they still do not reflect the lived experience of FOIA responders or the needs of the state’s communities.

Nobody seriously doubts the need for openness in government. But FOIA is already an imperfect instrument in that regard – much more information goes out about private persons and private matters under FOIA than about government – and it is difficult to see how making its provisions more punitive will help. FOIA can undoubtedly be improved, and there may even be reforms around which a consensus could form, but neither the substitute nor the original HB 4001 presently looks like a vehicle for that kind of reform.